

2003 No. 1312

LEGAL AID AND ADVICE, ENGLAND AND WALES

Civil Legal Aid (General) (Amendment) Regulations 2003

Made - - - - - *14th May 2003*

Laid before Parliament *16th May 2003*

Coming into force - - - *1st July 2003*

The Lord Chancellor, in exercise of the powers conferred upon him by sections 34 and 43 of the Legal Aid Act 1988(a) having had regard to the matters specified in section 34(9) of that Act and having consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, makes the following Regulations:

Commencement, citation and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (General) (Amendment) Regulations 2003 and shall come into force on 1st July 2003.

(2) In these Regulations a reference to a regulation by number alone means the regulation so numbered in the Civil Legal Aid (General) Regulations 1989(b).

Amendments to the Civil Legal Aid (General) Regulations 1989

2. In regulation 105—

(a) for paragraph (1), substitute—

“(1) In this regulation and regulation 106A, “assessment” means an assessment of costs by the Area Director and payable under a certificate in accordance with this regulation and regulation 107A.”;

(b) for paragraph (2A), substitute—

“(2A) Subject to paragraph (12), where proceedings have begun and the total claim for costs does not exceed £2,500, the solicitor shall apply to the Area Director for an assessment of those costs.”;

(c) for paragraph (3), substitute—

“(3) Subject to paragraph (12), where proceedings have begun and the total claim for costs exceeds £2,500, the solicitor may apply to the Area Director for an assessment of those costs if—

(a) there are special circumstances where a detailed assessment would be against the interest of the assisted person or would increase the amount payable from the fund; or

(a) 1988 c. 34. This Act is repealed by Part I of Schedule 15 to the Access to Justice Act 1999 (c. 22), subject to immaterial exceptions, and to transitional provisions and savings contained in S.I. 2000/774 (C. 16). Section 43 is an interpretation provision and is cited because of the meaning given to “regulations”.

(b) S.I. 1989/339, amended by S.I. 2000/451. These Regulations are revoked by virtue of the repeal of enabling provisions in the Legal Aid Act 1988, subject to the transitional provisions and savings contained in S.I. 2000/774 (C. 16).

- (b) after a direction or order that the assisted person's costs shall be determined by way of detailed assessment under regulations 107A(2), the solicitor incurs costs for the purpose of recovering moneys payable to the fund.”;
- (d) in paragraph (3A)(b)(i), after “discharged,” insert “but there has been no order for assessment or determination of costs by the court;”;
- (e) in paragraph (4), for “(2) or (3)”, substitute “(2), (2A) or (3)”;
- (f) in paragraph (5), after “that committee” insert “in writing”;
- (g) at the end of paragraph (11), insert—

“(12) In any proceedings where it is or may be necessary for the court to carry out a detailed assessment of costs payable to the assisted person by another party to the proceedings, the solicitor shall not apply to the Area Director for an assessment and the total claim for costs shall be subject to that detailed assessment by the court.

(13) In this regulation, “total claim for costs” means the claim consisting of the solicitor's profit costs (including those of any other solicitor who has acted under the certificate), counsel's fees and disbursements (if any), but excluding any element of Value Added Tax.

(14) Any costs incurred in connection with an appeal against the decision of the Area Director under this regulation shall not be deemed to be costs to which the assisted person's certificate relates.”.

3. In regulation 106A—

- (a) for paragraph (3), substitute—

“(3) The assisted party's solicitor shall apply to the Area Director for an assessment limited to legal aid only costs, if the amount of those costs including counsel's fees (if any) does not exceed £2,500.”;

- (b) for paragraph (4), substitute—

“(4) The assisted party's solicitor shall apply for a detailed assessment under regulation 107A(2) limited to legal aid only costs, if the amount of those costs including counsel's fees (if any) exceeds £2,500.”.

4. Omit regulation 113(4), (5), (6) and (7).

Signed by authority of the Lord Chancellor

Dated 7th May 2003

We consent

Scotland of Asthal
Parliamentary Secretary
Lord Chancellor's Department

Dated 14th May 2003

Jim Fitzpatrick
Nick Ainger
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (General) Regulations 1989 (S.I. 1989/339).

Regulations 2 and 3 make amendments so that in cases other than where there is to be an assessment of costs payable by another party to the proceedings, the Area Director will carry out civil legal aid costs assessments where the total claim does not exceed £2,500. In other cases the courts will make the assessment.

Regulation 2 also makes an amendment to provide that where the Area Director makes an assessment, the costs allowed do not have to be the same as those which the courts would allow.

Regulation 4 removes the requirement of an appellant in an appeal against a cost assessment in a publicly funded case to notify the Lord Chancellor of the appeal.

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